conceived to promote. Instead of fostering diversity, they may actually weaken the ability of particular broadcasters (or would-be broadcasters) to compete effectively against a variety of other powerful media not operating subject to comparable restraints. Rules that prevent weaker broadcast stations from competing effectively with stronger stations and handicap new program services which seek to compete with established program services (both broadcast and non-broadcast) should be removed or revised.[3]

With these concerns in mind, we now discuss three aspects of the Commission's proposed revisions in its local ownership rules — the redefinition of local markets, the waiver standard, and the attribution rules (as they apply to local ownership).

II. Local Television Ownership/Duopoly Rule

In reviewing its duopoly rule as Congress has mandated, the Commission is reconsidering its definition of local television markets. We address this issue first.

[3] This is certainly unfair and a waste of valuable spectrum resources, but it is also unfortunate because the *consumers* who are harmed by the regulations are disproportionately those who rely primarily on broadcasting for news, information and entertainment; *i.e.*, the poor and less well-off.

A. The Relevant Economic Market: Advertising

The geographic location of a supplier possesses only limited or indirect relevance for purposes of defining a relevant economic market. As the Commission has properly recognized in a variety of different industrial settings and operating contexts, the behavior of buyers and sellers is what actually determines the boundaries of genuinely relevant economic markets. Location may affect the behavior of buyers and sellers in a variety of different ways, but it is ultimately that behavior itself which defines markets. Thus, if buyers do not regard the products of suppliers with similar geographic locations as substitutes for one another, those suppliers cannot properly be regarded as competing in the same market. By the same token, if buyers would substitute the products of even geographically distant suppliers in response to a price change, those suppliers are properly regarded as competing in the same relevant market.

The import of this discussion in the instant context is that the existence of signal overlaps is, considered by itself, of only limited relevance in determining the boundaries of an economically relevant market and the specific identity of the buyers and sellers residing therein. The propagation characteristics of broadcast signals with similar inputs vary a good deal as a result of differences in the physical environment in which transmissions occur. Sometimes, especially in environments where the physical terrain is flat, broadcast signals may travel substantial distances. As a result, they may "overlap" with the signals from other stations. In addition, cities may be located in fairly close physical proximity to one another and, as a consequence, signals transmitted from one location may be receivable in the other.

In these types of situations, the mere fact of overlap does not necessarily imply that the overlapping signals actually reside in the same relevant economic market. They may or may not, but what *directly* determines whether they do is, as noted, the behavior of buyers and sellers.

With these caveats in mind, the question to be addressed is whether, or the extent to which, signals originating in different geographic locations may be properly regarded as competing with one another. As we have seen, that is a matter appropriately resolved by reference to the behavior of buyers and sellers which determines where "chinks in the chain of substitutes" actually occur. In particular, what is germane is the extent to which buyers and sellers may be reasonably expected or actually observed to alter their behavior when particular kinds of changes are hypothesized or actually occur. In particular, if an increase in the price for commercial exposures on a particular station (or set of stations) is conjectured, can the purchases of advertisers from more distant stations reasonably be anticipated to increase? If there were an actual price increase, would sales of exposures to local customers by more distant stations be observed to increase?

While the real world occasionally offers opportunities to observe market boundary-defining behavior directly,[4] analysts (more commonly) rely on "thought experiments" to resolve line-drawing issues. The relevant thought experiment for definition of a relevant geographic market for broadcast commercial exposures is to evaluate whether advertisers will, in response to a hypothetical price increase, shift their purchases to the exposures offered by signals originating in more distant locations. If the so-called "cross elasticity" of demand between local and more distant exposures can be reasonably expected to be large (*i.e.,* significant shifts of demand are anticipated), then the signals should be regarded as competing in the same market. If the intuited cross elasticity is small, the signals do not truly compete, *notwithstanding* any overlaps.

For signals originating in different cities sufficiently close together that there are significant signal overlaps, the question is whether advertisers would alter their purchase patterns in a manner indicating a high degree of substitutability. When

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[4] For example, several years ago the District of Columbia raised its gasoline tax by a significant amount, prompting many motorists to cross the boundary between D.C. and Maryland and purchase their gasoline supplies at service stations located in Maryland. That is clear evidence that stations located just over the Maryland border should properly be regarded as competing in the same geographic market as stations located in D.C.

the price of advertising exposures in Washington rises, will local advertisers begin purchasing a significantly greater number of exposures in, say, Baltimore? If so, then stations selling those exposures should be categorized as competing in the same market. Of course, in reality, it is probably highly *unlikely* that this type of change in purchasing behavior would actually be observed. Advertising on a Baltimore station is not likely a highly efficient way for car dealers in Washington to reach their natural customer base.

Local advertisers generally seek to reach a local audience. A signal originated in a more distant location may be capable of delivering some local audience, but a local advertiser has to compete for commercial availabilities with advertisers in the local area where the distant signal originates. For those advertisers, the local signal's commercial availabilities are more productive (*i.e.*, capable of producing a larger number of exposures) and thus of higher value. The distant advertiser must thus usually pay a price for commercial availabilities reflecting their (greater) local productivity, which is likely to be greater than their value in terms of producing local audience.

A similar calculus is likely to apply for national advertisers desiring to reach audiences in particular locations. Especially given the large number of competing outlets for national advertising, why would a national advertiser ever choose a comparatively less productive distant alternative to reach a particular audience? Thus, Ford and Coca-Cola do not advertise in Baltimore to reach potential consumers in Washington.

Our conclusion is that the commercial availabilities of stations originating in different localities, particularly cities with distinct local identities (Baltimore and Washington, to choose a familiar example), are generally not likely to be regarded as close economic substitutes by local and national advertisers in each city's region. In economic terms, the cross-elasticity of demand between their respective offerings is likely to be small.

This is the kind of analysis antitrust authorities would undertake, were a particular proposed consolidation of station ownership to trigger competitive sensitivities. One argument for separate FCC administration relates to concerns about program diversity, *i.e.*, concerns about competition in what is a highly important factor input market in the context of commercial broadcasting. We turn now to programming considerations.

B. The Relevant Economic Market: Programming

In the commercial broadcasting industry, programming is the inducement or "factor payment" broadcasters offer consumers to get them literally "to pay attention." Consumers' attention is then packaged in the form of commercial minutes or exposures and marketed to advertisers. The efficiency with which the market for programs operates is, of course, highly important and a prime focus of public policy.

In economic terms, there are a variety of reasons to anticipate that consolidations of station ownership will enhance the efficiency with which the *consumer* market for broadcast programming operates. Several of these reasons relate to the potential for realization of productive economies in the development, production and distribution of high-quality entertainment programming, news and public affairs and to the creation of stronger incentives for productivity-enhancing investments in station infrastructure. We shall turn to these presently, but note that they could, in principle, easily offset any diseconomies that might be discerned from consolidation. Where there are economies and diseconomies, they must be balanced against one another to determine expected net effects. Before proceeding, we first consider some potential diseconomies that have been enunciated. Our analysis leads us to reject these alleged failure modes producing diseconomies as invalid. Thus, we conclude that relaxation of the multiple ownership rules will produce no harm but will permit important consumer-welfare-enhancing economies to be realized.

We have just presented the "way of thinking" antitrust analysts utilize in defining economically relevant markets and have applied this tool to the problem of delineating relevant markets — as it happens, *local* markets for broadcast commercial exposures. The same type of analysis can be used to evaluate the consumer market for programming. However, instead of thinking in terms of changes in *price*, we consider changes in *programming* — programming being the price analog in the consumer (factor) market for prices paid in the advertising market.

In the consumer market for broadcast programming, recall that consumers pay attention in exchange for the programming broadcasters supply. We can thus ask what the consumer response to a programming change might be so as to ascertain the extent to which the programming of different stations competes. We can also consider what kinds of programming changes it is reasonable to anticipate occurring as a result of consolidation. In general, we think it is reasonable to infer improved programming and expansion of diversity; *i.e.,* the equivalent of price *decreases* rather than price increases. This implies that, to the extent consumers view different stations' programming as competing/substitutable with each other, they are *better-off* as a result of consolidations.

With respect to consumer substitution, we would first simply note that, to the extent changes in one station's programming significantly alters the viewing of other stations' programming, the stations may properly be regarded as competing in the same *consumer* market. Such stations may not compete in the same market for advertising exposures, but still compete in the market for consumer attention. How significant a competitor a station is in any given locale obviously depends on the size of the audience it attracts. If it attracts only a small audience, it will presumably not exert a significant influence on other stations' programming decisions. In general, for the Baltimore/Washington-type situation, while there may be non-negligible viewing of distant signals, the audience shares will not rise to a level which significantly affects local stations' programming decisions. In other words, Washington stations generally do not program with reference to what the Baltimore stations are doing, but rather with respect to what their more local cohorts are programming.

Now consider the interesting question of what effect consolidation can be expected to have on competitive programming decisions. We noted at the outset the existence of a large body of professional economic literature suggesting that consolidation may well enhance diversity, since diversity maximizes audience size and hence commercial values.[5] Where stations' signals overlap, but more distant signals do not attract significant audiences (*i.e.*, audiences sufficiently large to affect the programming decisions of other more local signals), consolidation does not affect programming decisions. What was relevant before the consolidation remains relevant after the consolidation. In a similar vein, we note that in a competitive environment the specific identity of an owner should make no difference in terms of programming decisions. Thus, network-owned and -operated stations sometimes displace network programming when they deem it in their interests to do so.

C. DMAs: An Appropriate Definition

Based on the behavior of advertisers and programmers, the Designated Market Area (DMA) appropriately defines the relevant economic market for purposes of Commission's local ownership rules. DMAs reflect market realities far better than the predicted coverage area of a station based on engineering assumptions about the reach of that station's signal.

DMAs can, in all important dimensions, be considered different markets. From the perspective of advertisers, there are unlikely to be significant cross-elasticities of demand among DMAs. As we have discussed, if the cost of

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[5] *See* footnote 2 and discussion at footnote 15.

advertising increases in Washington, advertisers are not likely to compensate by increasing the amount of advertising they buy on Baltimore stations in order to reach viewers in Washington. Second, DMAs tend to define relevant markets for programming by providing the most reliable measure of where viewing of a particular program occurs.

We do not believe it is necessary or appropriate for the Commission to utilize Grade A signal contours as well as DMAs to define local markets. The Commission's stated concern for augmenting DMAs with the Grade A test is that otherwise there will be a loss of diversity for viewers in those areas in which the signals from stations in adjacent DMAs overlap ("overlap viewers").

We do not argue with the proposition that it is important to maintain numerous independent voices. However, relaxation of the local ownership rules is not likely to translate into dangerously high levels of media concentration. Any effect of such a relaxation will be of marginal significance and pale in comparison with the plethora of voices competing in today's exploding markets for information and entertainment.[6] It is extremely difficult to conjure up convincing threats

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[6] *See* "An Economic Analysis of the Broadcast Television, National Ownership, Local Ownership and Radio Cross-ownership." Economists Incorporated, May 17, 1995 and Haring, J. and Shooshan, H., "The Evolving Electronic Media Marketplace and the Devolving Case for Broadcast Ownership Restrictions," March 20, 1995 (hereinafter "The Evolving Electronic
(continued...)

to free speech from marginal relaxation of the local ownership rules. Rather than viewing such relaxation of the rules as detracting from diversity and weakening independent expression, we find compelling the economic basis for thinking that precisely the opposite result is actually likely to obtain. To that case we now turn.

We think the Commission's rationale for using a Grade A contour test is suspect from the standpoint of actually promoting diversity. In our view, imposition of such a measure will also serve to undermine future competition with the most popular over-the-air program services today (NBC, ABC, CBS, Fox and PBS) whose distribution footprints include substantial overlaps of adjacent markets.

The following hypothetical illustrates our point. Let us suppose that viewers in each of two adjacent DMAs currently have the five most popular over-the-air program services and two marginal services (which are hardly watched). The marginal services are each delivered by UHF stations. [For purposes of this hypothetical, we focus exclusively on over-the-air voices as opposed to the wider range of voices upon which people in the two markets depend for information, opinion and entertainment; *e.g.*, radio, cable, satellite, newspapers.] Let us further

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[6] (...continued)
Media Marketplace").

suppose that the Grade A contours of the stations in these markets overlap such that viewers in the overlap area currently have the same five most popular services and four marginal services. The Commission is apparently concerned that overlap viewers will be worse off if the four marginal stations "pair off." But, if (as must surely be the case and as we discuss subsequently) the jointly owned enterprises are more efficient, can upgrade their program services, and therefore compete more effectively with those stations (predominantly VHF) that are offering the most popular program services, overlap viewers are seemingly better off. The popular services will face tougher competition (and have a greater incentive to improve their own offerings) which will benefit viewers in the DMAs and overlap viewers alike.

Although the stations would be commonly owned, they can be expected to continue to develop distinct programming for their primary markets. For example, if the two stations have common management, a common sales force and even some news staff in common, they can be expected to produce news and public affairs programing that is aimed at each of the two primary markets or DMAs (and is likely higher quality than what was being produced by either station on its own).

In this respect, overlap viewers who may have an interest in one or the other market can be said to benefit.[7]

While in a strict numerical sense overlap viewers have suffered a "loss" of viewpoint diversity, the question should be: doesn't a rule that keeps weak stations weak ultimately lead to less viewpoint diversity (*e.g.*, make it less likely that weak program service will be replaced by a strong program service and that a marginal station will evolve into a full service station)?[8] Moreover, consumers in the overlap area get information from a wide range of sources. Here, it is appropriate to define the market broadly to include other mass media which are sources of news and information.

III. Waivers of the Duopoly Rule

While there are legitimate concerns about concentration of ownership in local markets, there can be significant efficiencies associated with the ownership of two televisions stations in the same market. There are a wide variety of ways in

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[7] The fact that the common owner might seek to affiliate both stations with a particular program service (or a network) will have the effect of improving the overall programming of both stations. Overlap viewers would lose one weak program service, but would gain a new stronger service as well as the improved local programming (news, etc.) on both stations. We judge this a net plus for real diversity.

[8] We note that weak stations typically contribute little to actual viewpoint diversity (*i.e.*, they have little or no news and public affairs programming and do not editorialize).

which relaxation of the Commission's local ownership rules may be expected to increase station productivity, enhance operating efficiency and expand consumer welfare by improving program quality. Reform of the ownership rules would have these effects by economizing on transactions costs and permitting organizational arrangements that would otherwise likely not be viable. Arrangements that would be difficult or impossible to effect otherwise may well become possible with suitable rule changes.

Within individual markets, there are likely to be, as the Commission has previously often recognized, significant cost savings associated with the ability to exploit fixed managerial, administrative and marketing resources more intensively and effectively. Not only may fixed costs be more efficiently spread over a larger span of activities, there may also be important productive synergies to be exploited. Thus, it is not simply a question of an advertising salesperson being able to represent more than one station and thereby to exploit idiosyncratic knowledge of the local customer base more intensively. It also relates to providing customers transactionally convenient and economically priced package offerings that combine availability of complementary programs (from an advertising standpoint) transmitted on different stations. These are the kinds of innovative advertising offerings that cable systems in different markets are increasingly offering. If undue concentration would not result in a particular market (presumably in the large markets with many broadcast outlets), it is hard to fathom why broadcasters should be effectively prevented from exploiting opportunities for realizing similar synergies.[9]

Regulation that prevents the exploitation of productive synergies may also reduce, not enhance, diversity. If a station remains weak (or fails altogether), the public interest is harmed.

By using DMAs to define local markets, we believe the Commission will minimize the need for waivers. However, were the Commission to retain the proposed Grade A signal contour test, there should be a presumptive waiver of the local ownership rules to permit certain combinations.[10] Such a waiver would also

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[9] Economies from spreading fixed resource costs may also be available from combining geographically disparate operations as well as those in the same local market. Costs of developing and administering common accounting practices and controls, developing effective promotional material and brand-image creation, and of participating constructively in various industry fora and governmental relations could all likely be profitably shared by multiple stations. These economies are important in assessing the need to reform the national ownership rules.

[10] A presumptive waiver is justified to in order to make it more difficult for adverse parties (*i.e.*, competitors) to use the waiver process for tactical advantage. A presumption in favor of UHF/UHF combinations puts the burden of proof where it belongs — on those who would argue for less effective competition and fewer strong local voices.

be appropriate to permit some combinations within a DMA where there are numerous outlets.

Perhaps the most compelling case can be made for UHF/UHF combinations. Despite gains made possible by increased cable carriage and improved set design, UHF stations continue to be handicapped relative to VHF.[11] These handicaps include:

- Higher operating costs to achieve a signal comparable in strength to those of VHF stations;
- A signal more prone to interference (from tall buildings, etc.);
- Inferior reception due to antenna design and set capabilities;[12] and

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[11] The UHF handicap is currently an issue in New York City where the New York Yankees are concerned about the effects of shifting telecasts from Channel 11 to Channel 31. Yankee owner George Steinbrenner is reportedly considering moving the telecasts back to Channel 11 if Channel 31 cannot satisfy his concerns about signal quality. "Channel 31 Must Prove Its Broadcast Strength," *New York Times*, February 4, 1996, p. B10.

[12] For the 35 percent of households that do not subscribe to cable and for those television sets in cable households that receive television signals off the air (*i.e.*, are not connected to cable), there are likely to be many which do not have the separate UHF antennas connected or which have older television sets or remote control devices on which UHF stations are "segregated" from VHF stations.

- Less favorable channel position (*i.e.,* separated from most popular VHF stations and on cable systems often from most popular cable networks).[13]

Put another way, UHF stations are "inferior machines." Because of the handicaps under which they operate, UHF stations generally have a smaller potential audience size. As a consequence, they are likely to provide lower-quality programming (and service to the community) unless they can offset their operating disabilities by achieving other kinds of efficiencies.[14] Allowing UHF combinations may well permit the enterprise to achieve economies such that the two outlets can be stronger voices than if they remained under separate ownership.

Moreover, combinations of stations can also be expected to enhance format diversity since it is more likely that a common owner will counter-program.[15] We note that format diversity in radio increased substantially as FM became stronger

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[13] We note that this problem is most severe for the higher-numbered UHF stations, which also tend to be the weaker UHFs.

[14] It is no accident that the most inferior outlets (from the standpoint of technical production of potential audience exposures) generally distribute the least attractive programming. Where there is a mismatch between the quality of the programming and of the distribution, migration often occurs with the most successful programming migrating to the best outlets or (as in the case of Fox and NFL football) the higher quality outlets migrating to the better programming.

[15] *See* H. Shooshan and C. Sloan, "FCC Media Ownership Rules: The Case for Repeal." *Journal of Communication*, 1982, Vol. 32, p. 4.

(more popular).[16] Where many AM/FM combinations had a substantial amount of common programming in the early days of FM, separate FM formats have developed to the point where there is typically no duplication of programming today even though many AM/FM combinations (and other combinations made possible by the liberalization of local radio ownership rules, for that matter) share staff, transmitter sites, studio space, etc.

As to concerns that UHF combinations in the same (large) local market will result in a loss of viewpoint diversity, we restate the point we made in discussing overlap areas. Are viewers in a local market better off with a stronger sixth voice to compete more effectively against the five popular voices than with two weaker voices? Especially given the many other sources of news, information and opinion available to those viewers, we think so. In any event, the government should not suppress competition (and handicap broadcasting relative to other delivery technologies) in the name of preserving strict viewpoint diversity.

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[16] We acknowledge that Commission rules restricted simulcasting. However, radio's format diversity can be much more readily explained by underlying economics and technology than by regulation.

IV. The Attribution Rules

Our analysis of the attribution rules addresses the Commission's proposal to tighten the standard where a "program supplier" is involved for purposes of applying its ownership rules.[17]

The Commission has tentatively concluded that it should tighten its attribution rules to prevent the circumvention of its ownership rules by "program services." It has "determined" that networks will be more inclined to enter into contractual relationships in conjunction with a debt or equity position that will permit them to have *de facto* control of a station. The Commission has, therefore, proposed to make it more difficult (and more costly) for networks to make these investments.

Yet, precisely because it needs to strengthen its existing base or to assemble a new portfolio of stations, a network may be the most likely investor in weak UHF stations. As such stations are upgraded, advertisers, (at least some) other program suppliers[18] and viewers benefit (the latter through more and better

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[17] We note that the Commission could, if it chooses, adopt different attribution rules for applying whatever national and local ownership restrictions are warranted. We see no reason why "program suppliers" should be singled out for stricter scrutiny in the application of either national or local ownership rules.

[18] Program suppliers with high quality programming benefit from having a greater number

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programming, including local news, etc.[19]). By suggesting that program services may have a special incentive to "work around" the attribution rules, the Commission is, in effect, acknowledging the unintended consequence of its own national ownership rules; that is, that they inhibit entry by efficient risk-sharers.

How is it good public policy to keep weak stations weak in the name of preserving local autonomy? At the margin, the FCC's option time and right to reject rules ensure that some autonomy is retained. Also, any investor has an interest in seeing that its investment earn the maximum return whatever his/her strategic interest in that investment might be. But, the real issue posed by the Commission's proposed change in its attribution rules is the economic future of broadcast television (especially marginal stations) when faced with increased competition from cable, satellite, and other media, as well as with the considerable costs of conversion to ATV.

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18 (...continued)
of strong bidders whether it be to supply national (network) programming or local (syndicated) programming.

19 As we wrote nearly two years ago: "Those who maintain that expanded network station ownership will reduce locally originated programming need to explain why previous relaxation of ownership restrictions has apparently *not* had that consequence. Network and group-owned stations typically do *more* local news and public affairs programming. The result of previous reform has apparently been more networking *and* more locally originated programming as well. Networking can create stronger local broadcast operations, and multiple station ownership can help facilitate the formation of competitively viable networks in an era of universal multimedia competition." "The Evolving Electronic Media Marketplace," p. 9.

V. Conclusion

The Commission has an opportunity to adjust its television broadcast ownership rules to the reality of a rapidly expanding mass media marketplace. It is a marketplace characterized by an abundance of independent delivery channels and an almost bewildering array of options for consumers. The Commission should conform its local ownership rules to this reality, especially where, as we have shown, its rules restrain efficient competition and reduce real diversity.

Among those steps should be:

- Adopting a definition of local television market consistent with the relevant economic market (*i.e.*, using DMAs) and not relying on signal contours;
- Utilizing a presumptive waiver of its duopoly rules to permit common ownership of two stations (*e.g.*, UHF/UHF combinations) in large markets in order to strengthen otherwise marginal stations; and
- Applying an attribution standard that does not make it more difficult for networks to enter into arrangements which will strengthen local television stations financially.

ATTACHMENT B

DECLARATION

Rick J. Blangiardi hereby declares as follows:

1) I am currently president of the Premier Horse Network. Prior to this position, I was group president of River City Broadcasting, in senior management at the CBS Network and vice president/general manager of major and medium market television stations. For the past twenty years I represented these stations and the network in the sale of advertising time to national, regional and local advertisers. My experience includes the positions of vice president/general manager of KPIX TV in San Francisco (the CBS affiliate) and of KOVR TV in Sacramento (the CBS affiliate) – adjacent DMA's.

2) Television DMA's are separate and distinct for purposes of advertising sales. I am not aware of any instance in which a national, regional or local advertiser seeking to reach television households in one DMA purchased advertising time on a station located in an adjacent DMA. Similarly, program suppliers sell the same product to stations in adjacent DMA's even though stations in one DMA may reach some of the viewers in the other.

3) My experience in the San Francisco and Sacramento DMA's was well supported in market research which affected our strategic marketing, sales and programming efforts during my tenures. Local stations succeed best when they understand their marketplace and broadcast accordingly to best meet the needs of their viewers and advertisers.

4) I declare under penalty of perjury that the foregoing is true and correct and is submitted in good faith.

Rick J. Blangiardi

Rick J. Blangiardi

FEB. 7, 1997

Date